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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

NO. 666

VIRGINIA PAVLIS, joined by her Husband NIKITAS PAVLIS, I. J. BELCHER and MANOLIS STAMATIADIES,
Petitioners

VS.

E. Z. JACKSON,
Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

Fred T. Saussy,
J. C. Davant,
Attorneys for Petitioners.

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Petitioners,
Appellants below

VS.

E. Z. JACKSON,

Respondent,
Appellee below.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

To the Honorable Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Your Petitioners Virginia Pavlis, joined by her husband Nikitas Pavlis, I. J. Belcher and Manolis Stamatiadies respectfully show:

That the Respondent E. Z. Jackson in a cause in admiralty in the District Court of the United States for the Southern District of Florida libeled the Sponge Boat Portaritisa at Tarpon Springs in said District on the seventeenth day of September, 1940, claiming advances of cash and the furnishing of provisions and equipment from the eighteenth day of August, 1939 to sixteenth day of August, 1940, aggregating $5754.83, with credits amounting to $3644.49 (pp. 3 and 4 of record), leaving a balance of $2110.34 and attached to his libel photostatic copies of his book accounts (pp. 6-12 record.) The Petitioner Virginia Pavlis filed claim and relieved the boat with the Petitioners I. J. Belcher and Manolis Stamatiadies, as surities and she, joined by her husband, the Petitioner Nikitas Pavlis, answered (p. 13-21 record), describing the alleged vessel as a small 39½ ft. Motor boat, with Diesel engine, set up that the libelant operated a small wayside filling station and country grocery, was not a dealer in articles necessary for the operation of the boat, that he agreed to advance money for the boat's operations but before doing so required the Captain, Nikitas Pavlis to give him a note for $1500.00 due in ninety days, and later other notes and exacted $65.00 as bonus before extending credit (p. 15 record), that he advanced cash to be used by the Captain personally and to be given to prospective members of the crew, who, together with the Captain, were to work strictly on share or lay basis (explained in evidence p. 104) and that such advances did not create a lien on the boat. He further advanced cash used in the purchase of supplies and equipment from dealers who handled such commodities,

and in his dealing exacted and charged interest in excess of 25% in violation of certain cited sections of the Florida Statutes (p. 17), and that the initial cash was used in part to pay bounty to individual members of the crew. The answer further denied that the proceeding was brought in good faith, but to hinder and delay the claimants, who are poor people, in their operations; that such claimants had extreme difficulty in giving the necessary bond in the sum of $2500.00 to relieve the boat which had been attached upon the usual $250.00 cost stipulation, given by the libelant. These allegations are sustained by the evidence and there are no disputed questions of fact, on the questions now presented to this court.

The undisputed facts as brought out by the evidence show that the Libelant was a money lender (p. 144 record), and operated a small wayside filling station and local grocery store and on August 17, 1939 agreed with the Petitioner Nikitas Pavlis, the Captain of the boat, title of which was in the Petitioner Virginia Pavlis, but operated by Nikitas Pavlis, as Captain, who together with other members of the crew, received no fixed wages, but worked on lay shares, (p. 104 and 122 record) to extend credit, demanded and received in advance the note of Nikitas Pavlis for $1500.00 (p. 44 and 107 record), and demanded and received $65.00 in cash as bonus for the loan. (p. 108 record). At this time the boat was being operated under an agreement with a mortgage creditor that the proceeds should be handled by counsel for such creditor and for the claimants and expenses of operation paid after certain payments on the mortgage (pp. 107, 146). The money loan-

ed by libelant was not paid over to the Captain at the time, but advanced from time to time in cash to pay advance bounty to the Captain and the members of the crew, as bounty or advances on the anticipated earnings of each in the voyages yet to be made, and also for the purchase from dealers of marine supplies and special groceries suited to a Greek crew, none of which were handled by libelant. Small quantities of goods so handled were supplied from time to time and charged. (p. 12 record).

By September 5, 1939, although the $1500.00 note had not yet matured, the libelant demanded and received from the Captain a note for $300.00 (pp. 44 and 127 and 128 record). By this time the aggregate of cash advanced to the crew and for buying supplies and the charges entered on the libelant's books for goods alleged to have been furnished by him, had reached approximately the $1500.00 credit extended. Later smaller notes were given, in like manner. (pp. 44, 127 and 128 record). This note and others was kept by libelant and delivered into court before the commissioner as having been unpaid. (p. 42-44 record). The operations of the boat under this arrangement lasted about a year and consisted of three trips or voyages and payments were made on the amounts charged in the supply account for the first and second voyages (p. 11 and 12 record) and for the bounty money for the second and third voyages, leaving unpaid, according to the book account, $1074.05, advances charged in the cash account for the first voyage (p. 12 record), a charge of $832.66 for the so-called supplies furnished for the third voyage (p. 7 record), together with a slight balance for the so-called supplies for the second voyage (p. 11 record).

The operators of the boat and the members of the crew claimed that grossly excessive usury had been charged by the libelant on nominal loans and also on sums advanced for the purchases from dealers, by the entry of unjust charges greatly in excess of the cost of the articles, as if they had been bona fide sales at a legitimate profit, and that this constituted usury in excess of 25% and forfeited all charges under a Florida Statute to that effect. (Cited in brief). On the initial charge for cash advanced the libelant received the $65.00 bonus (p. 108 record), and $63.57 paid him December 11, 1939, which he entered on his account as interest from August 18, 1939 to December 11, 1939 (p. 12 record), and testified that it was so applied. This was remitted, as all payments were made, by letter from the attorney handling the funds and was sent to apply on the note. See letter page 158 of record. The libelant received it but did not so apply it, appropriated it as interest and did not reduce the principal by this amount. (pp. 85, 86 and 99 record). His manner of designating interest was "inst." In addition to this he claimed ten per cent (p. 92 record) and added 30% commission flat, not per annum, on the items representing articles purchased from dealers, which he did not have (p. 91 and 93) and never handled—such as diving suits and all other articles of equipment, and Greek groceries and bread. The unquestioned proof showed that he agreed to a conference and made an appointment for it, but did not meet such appointment (p. 150 and 151 record) and when the boat had been fitted from other sources and was ready to go out, filed his libel and tied it up. The Captain testified,

he expected to pay the libelant 10% or 15% profit on what he actually sold him himself. (p. 130 and 132 record).

On the 7th day of March, 1941 the District Judge entered a decree for $1771.57 (p. 69 record), $945.48 of it being for cash and $826.09 being for supplies charged (pp. 66 and 67 record). On April 30th, 1941 appeal to the United States Circuit Court of Appeals for the Fifth Circuit was allowed and perfected (pp. 70-80 record) and, after making some alterations in the sum allowed, such appellate Court entered judgment on the tenth day of November, 1942, affirming the decree of the District Court as altered by such decision. Petitioners, as Appellants in such Court filed their petition for a rehearing November 27th, 1942 (p. 190 record) and this was denied by the Court on December 11th, 1942.

JURISDICTION

Petitioners respectfully submit that this Court has jurisdiction to review the judgment and decree in question under the provisions of Section 240 A of the Judicial Code as Amended February 13, 1925 (U. S. Code Title 28 Sec. 347).

The opinion and judgment were rendered Nov. 10, 1942 (p. 182 and 190 of record) Petition for rehearing was denied December 11, 1942 (p. 193 record.)

OPINIONS BELOW

The court rendered opinion which is on pages 182-188 inclusive in the record.

Reported 131 Fed. (2nd) 362

The District Court filed no opinion. The District Court's findings appear on pages 65 to 67 of the record.

QUESTIONS PRESENTED AND REASONS RELIED UPON FOR ALLOWANCE OF WRIT

We submit that the following questions are involved and render the cause, one which should be reviewed by this Court:

First

The Court's holding that a maritime lien existed for the cash advanced in the home port before earned and used, as advances to the Captain and crew is in conflict with decision of the United States Circuit Court of Appeals for the Second Circuit and is an important question of general Maritime law throughout the coastal areas of the Nation.

Second

Such holding is in conflict with previous rulings of this Court on the subject.

Third

The lower Court's refusal to apply the State usury law in an admiralty proceeding is one never passed on by this Court and should be determined.

Fourth

The lower Court's refusal to apply the provisions of the State usury Statutes to a condition shown by undis-

puted facts is an important question of local law and such decision is in conflict with applicable local decisions.

Richter Jewelry Co. v. Schweinert 169 Sou. 750; 125 Fla. 199

Hawley v. Kendall et al. 191 Sou. 10; 139 Fla. 850

Fifth

The lower Court held that the Sponge boat Portaritisa was a fishing boat under the provisions of U.S.C.A. Tit. 46, Sec. 598, 34 Stat. 551 and 46 U.S.C.A. Sec. 599, 41 Stat. 1006, which is an important question which has not been settled by this Court, but should be.

Sixth

The sponge industry is confined exclusively to the Fifth Circuit, where all the gathering and preparation for market is carried on and there is no likelihood of any questions of classification of sponge boats with relation to the Statutory distinction mentioned above being decided elsewhere, or other question herein presented especially applicable to them, which in itself furnishes an independent ground for the granting of the writ as herein prayed.

Scriber-Schroth Co. v. Cleveland Trust Co. 305 U. S. 47; 83 L. Ed. 34; 59 Sup. Ct. 8.

Exhibit Supply Co. v. Ace Patents Corporation, 315 U. S. 126

Muncie Gear Works, v. Outboard Marine & Manufacturing Co., 315 U. S. 759

Seventh

The lower Court by its decision permits a lender of money financing a captain operating a vessel on lay, to charge for the use of money loaned to the captain to pay cash for supplies, to exact 15% for 3 months, over and above the actual amount of money loaned for that purpose, thereby permitting a gross violation of the Florida usury laws, and such holding is in conflict with applicable local decisions.

Eighth

The lower Court's construction of Act June 5, 1920. Ch. 250 Sec. 30, sub. sec. P. 41 Stats. 1005. U.S.C.A. Sec. 971. The same act, sub sec. S. U.S.C.A. Sec. 974 in holding that "other necessaries" embraced cash is in conflict with decisions of the United States Circuit Court of Appeals for the Second Circuit in the application of the rule of Ejusdem Generis.

The Hatteras 255 Fed. 518.
The Insonomia 285 Fed. 516.

Wherefore your Petitioners respectfully pray that a writ of certiorari be issued out of and under the seal of this Honorable Court directed to the United States Circuit Court of Appeals for the Fifth Circuit, commanding the said Court to certify and send to this Court for its review and determination, on a day certain to be therein named, a transcript of the record and proceedings had in the said cause herein set forth, to wit cause pending in the said

Court being cause numbered 10004 wherein the said Petitioners are Appellants and the said Respondent herein named is Appellee, and that the decree of the said United States Circuit Court of Appeals in the said cause be reversed and that your Petitioners have such other and further relief in the premises as to this Honorable Court may seem meet and just

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